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FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Jan 20, 2021

SEAN F. MCVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

No. 1:14-CR-02100-SAB-2

v.

EMILY LOUISE HERNANDEZ-
STEPNEY,

Defendant.

**ORDER DENYING
DEFENDANT'S MOTION FOR
REDUCTION OF SENTENCE
AND COMPASSIONATE
RELEASE TO 18 U.S.C.
§ 3582(c)(1)(A)**

Before the Court is Defendant's Motion for Reduction of Sentence and Compassionate Release to 18 U.S.C. § 3582(c)(1)(A), ECF No. 120. The motion was considered without oral argument. The Government is represented by Thomas Hanlon and Defendant is represented by Tim Nguyen. Defendant requests the Court reduce her sentence to home confinement or time served due to her health conditions and the need to provide childcare for her son, who is currently being cared for by family who do not want to care for him any longer. The Government opposes the motion. Having reviewed the briefing and the applicable law, the Court denies the motion.

**ORDER DENYING DEFENDANT'S MOTION FOR REDUCTION OF
SENTENCE AND COMPASSIONATE RELEASE TO 18 U.S.C.
§ 3582(c)(1)(A) * 1**

1 On October 7, 2015, Defendant was sentenced to 120 months incarceration,
 2 followed by 4 years of supervised release, pursuant to a Rule 11(c)(1)(C) plea
 3 agreement. She pled guilty to Possession of Firearms in Furtherance of a Drug
 4 Trafficking Crime. ECF Nos. 86, 88. She is currently confined in FDC SeaTac and
 5 her projected release date is June 27, 2024. According to the Presentence
 6 Investigation Report, ECF No. 68, and the Plea Agreement, ECF No. 49, the Drug
 7 Enforcement Administration received information that Defendant and her
 8 boyfriend were selling heroin. The DEA executed a search warrant at Defendant's
 9 home and discovered methamphetamine, heroin, nearly \$32,000 in cash, two
 10 digital scales, a stolen Beretta 9mm pistol with two magazines, and a stolen
 11 Springfield Armory .45 pistol with a loaded magazine. They also found two
 12 children in the residence. Defendant told law enforcement that she obtained the
 13 guns "for protection" to be used during drug transactions.

14 On July 6, 2020, Defendant filed her request for compassionate release with
 15 BOP. ECF No. 120-4. In her request, she identified a number of ailments,
 16 including major depressive disorder, generalized anxiety disorder, post-traumatic
 17 stress disorder, hypertension, chronic knee and hip pain, and childhood asthma.
 18 She also notified BOP that she has a 14-year-old son; he is currently being cared
 19 for by Defendant's mother, but she is no longer able to properly care for him to due
 20 to his behavioral issues. Defendant's request was denied on July 15, 2020. ECF
 21 No. 120-4 at 4. The response specified that Defendant did not meet the criteria for
 22 compassionate release because she did not provide proper documentation to
 23 support her claim that her parents were unable to care for her son. The response
 24 also specified that her request for compassionate release due to COVID-19 was
 25 rejected because her medical conditions did not put her at severe risk, and because
 26 fear of exposure to or contraction of COVID-19 is not grounds for release. *Id.* at 5.

27 On September 25, 2020, the Federal Defenders of Eastern Washington
 28 contacted BOP for copies of Defendant's records after she reached out to the FDO

**ORDER DENYING DEFENDANT'S MOTION FOR REDUCTION OF
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 § 3582(C)(1)(A) * 2**

1 for assistance in filing a motion with the Court. On October 8, 2020, the FDO filed
 2 an *ex parte* motion for appointment of counsel before Magistrate Judge Dimke,
 3 indicating that the FDO had identified a conflict of interest and requesting that CJA
 4 counsel be appointed on Defendant's behalf. ECF No. 117. On October 9, 2020,
 5 Magistrate Judge Rodgers granted the motion, ECF No. 118, and Tim Nguyen was
 6 appointed, ECF No. 119. Since filing the instant motion, Defendant has tested
 7 positive for COVID-19.

8 The Government opposes the motion. It argues that Defendant has failed to
 9 demonstrate that extraordinary and compelling reasons justify a sentence reduction
 10 at this point, as none of her documented health conditions constitute qualifying
 11 conditions that would put her at a heightened risk for severe illness or death if she
 12 were to contract COVID-19. The Government also argues that Defendant fails to
 13 show that resentencing her to a sentence of time served would serve the sentencing
 14 goals of § 3553.

15 Defendant brings her motion pursuant to 18 U.S.C. § 3582(c)(1)(A).¹ Under
 16 this provision of the First Step Act, an incarcerated person can seek compassionate

17 ¹ (c) Modification of an imposed term of imprisonment. -- The court may not
 18 modify a term of imprisonment once it has been imposed except that--

19 (1) in any case--

20 (A) the court, upon motion of the Director of the Bureau of Prisons, or
 21 upon motion of the defendant after the defendant has fully exhausted all
 22 administrative rights to appeal a failure of the Bureau of Prisons to bring a
 23 motion on the defendant's behalf or the lapse of 30 days from the receipt of
 24 such a request by the warden of the defendant's facility, whichever is earlier,
 25 may reduce the term of imprisonment (and may impose a term of probation
 or supervised release with or without conditions that does not exceed the
 unserved portion of the original term of imprisonment), after considering the
 factors set forth in section 3553(a) to the extent that they are applicable, if it
 finds that--

26 (i) extraordinary and compelling reasons warrant such a reduction; or
 27 (ii) the defendant is at least 70 years of age, has served at least 30
 28 years in prison, pursuant to a sentence imposed under section 3559(c), for
 the offense or offenses for which the defendant is currently imprisoned, and

**ORDER DENYING DEFENDANT'S MOTION FOR REDUCTION OF
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§ 3582(C)(1)(A) * 3

1 release after exhausting administrative remedies within the Bureau of Prisons. 18
 2 U.S.C. § 3582(c)(1)(A). She may be eligible for compassionate release if the Court
 3 finds “extraordinary or compelling reasons” to warrant a sentence reduction, she is
 4 determined not to pose a risk of danger to the community, and a sentence reduction
 5 is consistent with United States Sentence Commission policy statements. *Id.* The
 6 Sentencing Guidelines instruct the Court to consider the sentencing factors set
 7 forth in 18 U.S.C. § 3553(a) when deciding a motion for compassionate release,
 8 and provide that the Court should not grant a sentence reduction if the defendant
 9 poses a risk of danger to the community, as defined in the Bail Reform Act.
 10 U.S.S.G. § 1B1.13.

11 The parties agree that Defendant has satisfied any exhaustion requirements.

12 However, the Court finds that Defendant has not demonstrated extraordinary
 13 and compelling reasons that would justify a sentence reduction to time served.
 14 Defendant argues that she has several medical conditions that put her at risk of
 15 serious illness if she were to contract COVID-19, including major depressive
 16 disorder, generalized anxiety disorder, post-traumatic stress disorder, hypertension,
 17 and childhood asthma. She states that she is afraid of contracting COVID-19. She
 18 also argues that prison inmates are at a uniquely high risk of infection and illness
 19 because jails and prisons are unable to properly mitigate risk or allow for proper
 20 social distancing. Despite this, Defendant’s health conditions are not terminal
 21 conditions or conditions that prevent her from taking care of herself. *See* U.S.S.G.
 22 § 1B1.13, cmt. 1(A)(ii). Moreover, fears of contracting COVID-19 while
 23 incarcerated, while valid, are not sufficient to establish an extraordinary or

24
 25 a determination has been made by the Director of the Bureau of Prisons that
 26 the defendant is not a danger to the safety of any other person or the
 27 community, as provided under section 3142(g);

28 and that such a reduction is consistent with applicable policy statements issued by
 the Sentencing Commission.

18 U.S.C. § 3582(c)(1)(A).

**ORDER DENYING DEFENDANT’S MOTION FOR REDUCTION OF
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§ 3582(C)(1)(A) * 4

1 compelling reason to warrant a sentence reduction. *Compare United States v.*
 2 *Gonzalez*, 451 F. Supp. 3d 1194 (E.D. Wash. 2020) (granting motion for
 3 compassionate release based on COVID-19 pandemic where defendant was over
 4 60 years old and diagnosed with emphysema and COPD) *with United States v.*
 5 *Carver*, --- F. Supp. 3d ---, 2020 WL 1892340 (E.D. Wash. Apr. 8, 2020) (denying
 6 motion for compassionate release where defendant was not a member of the at-risk
 7 age category and did not suffer from serious underlying health conditions).
 8 Defendant has not shown that any of her conditions would put her at a significant
 9 risk of serious illness or death.

10 Finally, the Court finds that the § 3553(a) sentencing factors do not favor
 11 resentencing Defendant to home confinement or time served. First, Defendant was
 12 sentenced below the guideline range pursuant to a binding Rule 11(c)(1)(C) plea
 13 agreement, suggesting that her sentence was the minimal sentence necessary to
 14 effect just punishment and protect the community from Defendant's criminal
 15 conduct. Second, Defendant has not shown that she is not a danger to the safety of
 16 the community. Although the Court commends her for the positive progress she
 17 has made during incarceration, Defendant has prior convictions for vehicular
 18 assault, and the fact that the instant charges involved drugs and firearms in a home
 19 with children worries the Court. Finally, insofar as Defendant argues that she
 20 should be released to allow her to care for her child now that her mother is
 21 unwilling to do so, Defendant has not shown that another family member could not
 22 care for him until her release.

23 Thus, the Court finds that Defendant has failed to meet her burden to justify
 24 resentencing or compassionate release. The motion is denied.

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**ORDER DENYING DEFENDANT'S MOTION FOR REDUCTION OF
 SENTENCE AND COMPASSIONATE RELEASE TO 18 U.S.C.
 § 3582(C)(1)(A) * 5**

1 Accordingly, **IT IS HEREBY ORDERED:**

2 1. Defendant's Motion for Reduction of Sentence and Compassionate
3 Release Pursuant to 18 U.S.C. § 3582(c)(1)(A), ECF No. 120, is **DENIED**.

4 **IT IS SO ORDERED.** The District Court Executive is hereby directed to
5 file this Order and provide copies to counsel and Bureau of Prisons.

6 **DATED** this 20th day of January 2021.



10 A handwritten signature in blue ink that reads "Stanley A. Bastian".

11 Stanley A. Bastian

12 Chief United States District Judge

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**ORDER DENYING DEFENDANT'S MOTION FOR REDUCTION OF
SENTENCE AND COMPASSIONATE RELEASE TO 18 U.S.C.
§ 3582(C)(1)(A) * 6**